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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,381	07/02/2001	Glenda C. Delenstarr	10010760-1	3033

7590 10/05/2005

Agilent Technologies, Inc.  
Legal Department, DL429  
Intellectual Property Administration  
PO Box 7599  
Loveland, CO 80537-0599

EXAMINER

SISSON, BRADLEY L

ART UNIT PAPER NUMBER

1634

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Allowability**

Application No.

09/899,381

Applicant(s)

DELENSTARR ET AL.

Examiner

Art Unit

Bradley L. Sisson

1634

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment of 18 August 2005 and interview of 28 September 2005.
2. ☒ The allowed claim(s) is/are 13, 15, 16, 18-23 and 28-34.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                      |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                              |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                        |
|   | 9. <input type="checkbox"/> Other _____  |

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Bret Field, Reg. No. 37,620, on 28 September 2005.

The application has been amended as follows:

13. (Amended) A method of detecting the presence of an analyte nucleic acid in a sample, said method comprising:

(a) providing a nucleic acid array comprising:

(i) at least one hybridization feature to which said analyte nucleic acid specifically binds under stringent hybridization conditions; and

(ii) at least one background feature, wherein said background feature is a polymeric composition that comprises background probes that do not hybridize [specifically bind under stringent hybridization conditions] to complementary nucleic acids in said sample; (b) contacting said nucleic acid array with said sample under stringent hybridization conditions;

(c) washing said nucleic acid array;

(d) detecting a hybridization signal from said hybridization feature and background signal from said background feature;

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(e) subtracting said background signal from said hybridization signal to obtain a background corrected hybridization signal; and

(f) relating said background corrected hybridization signal to the presence of said analyte target nucleic acid in said sample to detect the presence of said analyte target nucleic acid in said sample;

wherein said method is further characterized by including a target nucleic acid labeling step prior to said detecting step (d).

28. (Amended) A method of detecting the presence of an analyte nucleic acid in a sample, said method comprising:

(a) providing a nucleic acid array comprising;

(i) at least one hybridization feature to which said analyte nucleic acid specifically binds under stringent hybridization conditions; and

(ii) at least one background feature, wherein said background feature is a polymeric composition that comprises background probes that do not hybridize [specifically bind under stringent hybridization conditions] to complementary nucleic acids in said sample; (b) contacting said nucleic acid array with said sample under stringent hybridization conditions;

(c) washing said nucleic acid array;

(d) detecting a hybridization signal from said hybridization feature and background signal from said background feature;

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(e) subtracting said background signal from said hybridization signal to obtain a background corrected hybridization signal; and

(f) relating said background corrected hybridization signal to the presence of said analyte target nucleic acid in said sample to detect the presence of said analyte target nucleic acid in said sample;

wherein said method is further characterized by including a target nucleic acid labeling step prior to said detecting step (d); and

further wherein said background feature provides a background signal following said contacting step that comprises: (i) a feature substrate background component; (ii) a probe background component; and (iii) a non-specific binding background component and tests positive in a two-color self-self array hybridization assay.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley L. Sisson whose telephone number is (571) 272-0751.

The examiner can normally be reached on 6:30 a.m. to 5 p.m., Monday through Thursday.

3. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, W. Gary Jones can be reached on (571) 272-0745. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bradley L. Sisson  
Primary Examiner  
Art Unit 1634

BLS  
30 September 2005